CHAPTER 380 DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BRYAN, TEXAS, AND BRYAN BUSINESS COUNCIL, INC., FOR HIGHWAY 47 CORRIDOR TECHNOLOGY AND INNOVATION ZONE

This Agreement is made by and between the City of Bryan, Texas, a home-rule municipal corporation ("City") and Bryan Business Council, Inc., a Texas non-profit corporation ("BBC").

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, article III, section 52-a of the Texas Constitution **("52-a")** expands the constitutional definition of public purpose to include economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and

WHEREAS, Chapter 380 of the Texas Local Government Code **("Chapter 380")** was passed to implement the provisions of 52-a; accordingly Chapter 380 permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits of the municipality and its extraterritorial jurisdiction **("Permitted Area");** and

WHEREAS, Chapter 380 gives to the governing body of a municipality the authority to contract with a nonprofit organization, or any other entity for the administration of a Chapter 380 program; and

WHEREAS, the BBC has title to real property and is anticipated to acquire additional real property located within the Permitted Area**,** and holds liquid assets derived from the lease, sale or development of such property **("BBC Assets");** and

WHEREAS, the City desires for the BBC to administer a program for the development of selected geographic areas within the Permitted Area in the vicinity of the BioCorridor Planned Development District and the Riverside Parkway/SH 47 corridor ("**Program Area**") so as to promote local economic development and to stimulate business and commercial activity in the Program Area through the recruitment of high quality companies engaged in pharmaceutical, biomedical, bioenergy, biotechnology, bioscience and technology, information technology and other state-of-the-art technology and innovation ("**Target Companies**") to locate significant facilities in the Program Area **("BBC Program");** and

WHEREAS, as a part of the BBC Program, the BBC may acquire additional real property in the Program Area near Highway 47 between Raymond Stotzer Parkway and State Highway 21 ("**Program Property**"); and

WHEREAS, the City finds that the BBC Program will use borrowed funds and/or public funds and resources for the direct accomplishment of a public purpose; and

WHEREAS, The BBC Program as herein described is consistent with the Articles of Incorporation and Bylaws of the BBC; and

WHEREAS, the City finds that the BBC has a long history of managing BBC Assets for the accomplishment of a public purpose, and the BBC has an organizational structure with a board of directors and assistance of City staff that will ensure that BBC Program contains sufficient controls to ensure that the public purpose is carried out.

NOW, THEREFORE, City and BBC agree as follows:

A. BBC Program

1. The BBC will use the BBC Assets to continue, advance, administer and manage the BBC Program, and in doing so the BBC will have authority to perform, approve and conduct actions, contracts and transactions including, but not limited to the following:
    a. Buy, sell or trade Program Property on a prudent person standard;
    b. Plat, subdivide, and develop the Program Property;
    c. Contract for construction, development or improvement on or related to the Program Property for the purpose of advancing the BBC Program using a prudent person standard;
    d. Diligently market the Program Property and any other real property in the Program Area now held or to be acquired by BBC to Target Companies;
    e. Borrow funds necessary to fund the BBC Program and pledge the Program Property to secure the loan(s) for the borrowed funds.

2. BBC will seek to recruit Target Companies to locate or expand significant facilities in the Program Area. BBC will work in coordination with City, and other economic development entities in Brazos County as appropriate, in implementing the BBC Program.

B. City Grant

3. City will pay to BBC on October 1 of each year of this Agreement, as a grant to BBC for the BBC Program, an amount equal to the annual principal and interest payments required to service the loan for the acquisition of the Program Property, such amount estimated to be equal to the sum of _____ Dollars ($_____). The total cumulative amount paid by City under this grant shall not exceed _____ Dollars ($_____). City will make an annual grant payment on or before _____ of a given year. A grant year shall be determined according the City's fiscal year in which a grant payment is made.

4. The City's obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

5. This Agreement may be terminated by the City by giving the BBC nine (9) months' written

notice of the intent to terminate the Agreement during which time the BBC will make a commercially reasonable effort to sell the Program Property acquired under the BBC Program ("**Sales Period**"). If the BBC is unable to sell the Program Property within the Sales Period, this Agreement will be extended for six (6) additional three (3) month periods of time (each an "**Extended Sales Period**") in order to facilitate the sale of the Program Property. The proceeds from the sale of the Program Property shall be distributed as set forth in the following paragraph.

6. Upon the sale of the Program Property or any part thereof ("**Sales Event**"), the proceeds of the Sales Event will be distributed as follows:

    a. First, to the payment of any debts or current obligations related to the Program Property including any partial release price required by a secured lender that funded the acquisition of the Program Property;
    b. Then payment to the BBC of an amount equal to a _____% annual rate of return on any BBC money invested in the BBC Program;
    c. The payment to the BBC for all costs incurred by the BBC in the development of the Program Property as described in Paragraph 1 above (such reimbursable costs to include the BBC's prorata share of any off-site utility development costs, but not including any closing costs associated with the sale of the Program Property);
    d. Then the remainder of the sales proceeds, if any, will be divided between the City and the BBC as follows:
        - 70% to the City; and
        - 30% to the BBC.

7. In the event that the City determines that it is in the best interest of the City and the BBC Program to transfer all or a portion of the Program Property to a Target Company or Target Companies, at no cost or a discounted cost to such Target Companies, the City shall give the BBC reasonable notice of such intent, and on or prior to the transfer of all or a portion of the Program Property the City shall fund an amount to the BBC necessary to cover the distributions required by Paragraph 6.a through 6.c. above.

C. <u>Guidelines</u>

8. The BBC Program must promote state or local economic development and to stimulate business and commercial activity through the recruitment of Target Companies to locate significant facilities within the Program Area.

9. The board of directors of the BBC will prepare an annual report for presentation to the city council of the City summarizing the key components of the BBC Program and report BBC's expenditures and receipts of funds under the BBC Program. The City anticipates that all or portions of the annual report may include confidential information that is appropriately reviewed by the city council in executive session.

10. The City and the BBC are committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. The

City has previously initiated economic development programs and incentives designed to encourage high quality business, commercial, retail and manufacturing interested in locating, remaining, and expanding in the City of Bryan. The BBC has been a part of these efforts since 1982, and the City is contracting with the BBC to administer, manage and enhance its economic development efforts to acquire and re-invest in properties, to assist development in the Program Area and to recruit Target Companies.

11. Acquisitions of real estate must facilitate an anticipated positive fiscal impact when taking into consideration potential increases in ad valorem taxes on real and personal property, potential sales taxes generated and creation of employment positions within the area of economic development.

12. The BBC Program is being established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base and improve areas that have been slow to redevelop without public incentives.

13. For properties to be eligible for consideration for acquisition, they must be undeveloped, underutilized, under-performing, in need of major renovation or revitalization, or needed to assist in the consolidation of other similar properties. The resulting project must create high visibility for the business and the City such that the project is deemed to serve as a catalyst to draw other projects to the targeted or high visibility area, thus promoting the public purpose of the BBC Program.

14. Agreements made between BBC and third parties pursuant to the BBC Program shall contain clear performance benchmarks for the third parties and adequate recapture provisions for the incentives to the third parties to address missed benchmarks. Benchmarks will contain one or more goals for increasing ad valorem tax and/or sales tax revenues, creation of new full-time equivalent jobs, increase in wages and similar goals. Benchmarks are subject to City approval.

15. Any amount of annual grant funds not expended by BBC for BBC Program purposes by the end of the City's fiscal year in which the funds were granted shall be returned to City.

D. Term

16. The term of this Agreement shall begin upon execution by both parties and shall be for an initial term that expires on the maturity date of a loan the proceeds of which are used by the BBC to purchase the Program Property, but such initial term not to exceed thirteen (13) years, unless sooner terminated by requirement of law or resolution of the City of Bryan, with optional 1 year renewal terms if agreed to in writing by both parties.

    a. During the last year of the initial term, or during any subsequent one (1) year renewal term, the BBC may market the Program Property for sale for the purpose of paying the balance due on any loan or financing used to acquire, develop, or improve the Program Property on or prior to the maturity of such loan or financing. If the Program Property is sold during

the initial term or any subsequent extension of the term, the proceeds of the sale will be distributed in accordance with Paragraph 6 above.

b. If at the expiration of the initial term or any renewal term ("**Termination Date**") all of the Program Property has not sold or transferred by the BBC, the City and the BBC will proceed in accordance with the following closeout process:

- Within thirty (30) days following the Termination Date the BBC will deliver to the City an invoice for an amount equal to all costs incurred by the BBC in the development of the Program Property as described in Paragraph 1 above (such reimbursable costs to include the BBC's prorata share of any off-site utility development costs, but not including any closing costs associated with the sale of the Program Property) (collectively the "**Reimbursable Costs**"). The BBC will also deliver to the City an updated title report on the Program Property showing title vested in the BBC free and clear of any liens or encumbrances ("Title Report").
- Within thirty (30) days following the City's receipt of the above-referenced invoice, the City will either submit written objections to the Reimbursable Costs, or pay the BBC an amount equal to the Reimbursable Costs. If the City objects to the Reimbursable Costs the City and the BBC agree to negotiate a resolution of their differences.
- Within fifteen (15) days following receipt of payment for the Reimbursable Costs the BBC will transfer the Program Property to the City using a Warranty Deed Limited Liability General Warranty free and clear of any liens and/or encumbrances.

E. Audit, Breach, & Recapture

17. It shall be a breach of this agreement if any portion of the BBC Program is determined by the City to be outside the direct accomplishment of a public purpose.

18. In the event of a breach, BBC shall be notified in writing that it is in breach. BBC will have 180 days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated, and the City is entitled to reimbursement by BBC of any funds or value of any property provided by City to BBC under this Agreement.

F. Miscellaneous

19. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. BBC shall not assign this Agreement without the written approval of the City Council, such consent not to be unreasonably withheld.

20. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to BBC: President
c/o City of Bryan, Attn: Economic Development
P.O. Box 1000
Bryan, Texas 77805

21. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

22. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

23. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

24. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

25. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

26. No Waiver. City's failure to take action to enforce this Agreement in the event of BBC's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking

action to enforce this Agreement on subsequent occasions.

27. Incorporation of Recitals. The determinations recited and declared m the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

28. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

29. Employment of Undocumented Workers. During the term of this Agreement, BBC agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), BBC shall repay to City all Incentives received under this Agreement as of the date of such violation within 120 days after the date BBC is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of BBC's receipt of the Incentive until repaid.

30. Government Code Provision. Pursuant to Texas Government Code 2252.152, BBC hereby verifies that it does not engage in business with Iran, Sudan, or foreign terrorist organizations and it is not identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153.

31. Basic Safeguarding of BBC Information Systems. (i) BBC shall apply basic safeguarding requirements and procedures to protect the BBC's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). (ii) BBC shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

Executed and effective on this the ____ day of _____, 2021.

CITY OF BRYAN **Bryan Business Council, Inc. ("BBC")**

_____ _____

Andrew Nelson, Mayor Sam Harrison, President

ATTEST: **ATTEST:**

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Mary Lynne Stratta, City Secretary

_____
John Bush, Secretary/Treasurer

APPROVED AS TO FORM:

_____
Thomas A. Leeper, Interim City Attorney